

State of South Dakota

EIGHTY-SIXTH SESSION LEGISLATIVE ASSEMBLY, 2011

946S0344

SENATE BILL NO. 101

Introduced by: Senators Novstrup (Al), Brown, Buhl, Haverly, Holien, Krebs, Peters, Rhoden, Sutton, and Tieszen and Representatives Hoffman, Cronin, Feickert, Hansen (Jon), Hawley, Hubbel, Hunt, Nelson (Stace), Olson (Betty), Solum, Steele, Verchio, and Wick

1 FOR AN ACT ENTITLED, An Act to provide a penalty for denying access to public records.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 1-27-1.15 be amended to read as follows:

4 1-27-1.15. No civil or criminal liability may attach to a public official for the mistaken
5 denial or provision of a record pursuant to this chapter if that action is taken in good faith. The
6 custodian of a public record may be subject to a civil penalty if the custodian of the public
7 record denies access to or fails to make available to the public for inspection or copying all
8 public records under the control of the custodian. The custodian may not unreasonably delay the
9 response to the request for the information. If the custodian has acted in bad faith, the custodian
10 may be personally liable for a civil penalty of fifty dollars per day for each day the custodian has
11 denied a person access to a public record.

12 Section 2. That § 1-27-36 be amended to read as follows:

13 1-27-36. For any ~~informal~~ request reasonably likely to involve a fee in excess of fifty dollars,
14 the custodian shall provide an estimate of cost to the requestor prior to assembling the



documents or records and the requestor shall confirm in writing his or her acceptance of the cost estimate and agreement to pay. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest. However, it is deemed to be in the public interest to waive the fee when the custodian unreasonably denies an request or unreasonably delays the response to an request for documents or records.

Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

In a civil action to gain access to a public record, the court may impose a civil penalty if the court finds that the custodian has acted in bad faith. In a administrative review with the Office of Hearing Examiners, the office of hearing examiners may impose a civil penalty if the office of hearing examiners finds that the custodian acted in bad faith. The civil penalty commences on the day after the custodian of the public record denies access to the public record and ends when the public record is made available to the requestor. Any civil penalty collected pursuant to this section is deposited in the state's general fund.

Section 4. That § 46A-3D-3 be amended to read as follows:

46A-3D-3. A water development district board of directors shall keep accurate minutes of its meetings and accurate ~~records and books of account~~ public records clearly setting forth and reflecting the operations, management, and business of the district. The minutes, ~~records, and books~~ and public records shall be kept at the principal place of business of the water development district ~~and~~. The public records shall be open to public inspection during reasonable business hours pursuant to chapter 1-27. The minutes shall be mailed to the official newspapers of the water development district.